



Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

August 31, 1998

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AUG 31 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Diane Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510-0504

Re: James A. Kay, Jr.
WT Docket No. 94-147

Dear Senator Feinstein:

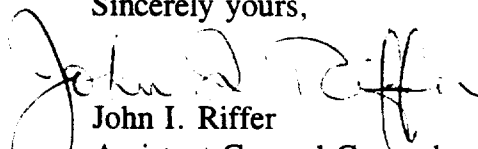
Thank you for your letter, dated August 18, 1998, concerning the above-referenced matter. Your letter, which was not served on the parties to this proceeding, was forwarded to the Office of General Counsel for reply in accordance with the Commission's ex parte rules, which are intended to ensure both fairness and the appearance of fairness in Commission proceedings.

The ex parte rules (47 C.F.R. §§ 1.1200-12) require that written communications to Commission decision-making personnel relating to the merits of restricted proceedings be served on all the parties to the proceeding. This includes communications that simply forward to the Commission the views expressed by others on the merits of the restricted proceeding. The above-referenced matter is a restricted proceeding, and it will remain restricted until it is no longer subject to administrative or judicial review.

In accordance with the ex parte rules, a copy of this letter and your incoming letter have been sent to the parties to this proceeding. Additionally, copies of the letters have been placed in a public file associated with, but not made part of, the record in this proceeding.

The Commission is charged with fully examining the record in all of its proceedings to determine what decision will best serve the public interest, convenience, and necessity. You may be assured that the Commission will give full consideration to all views presented in accordance with the procedures described above.

Sincerely yours,


John I. Riffer
Assistant General Counsel
Administrative Law Division

No. of Copies rec'd 1
DATE

The Honorable Diane Feinstein

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cc: Robert J. Keller, Esq.
Robert J. Keller, P.C.
4200 Wisconsin Avenue, N.W.
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DIANNE FEINSTEIN
CALIFORNIA

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COMMITTEE ON THE JUDICIARY
COMMITTEE ON RULES AND ADMINISTRATION

United States Senate
WASHINGTON, DC 20510-0504

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August 18, 1998

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Mr. Richard Engelman
Chief
Federal Communications Commission
Planning and Negotiations Division International Bureau
2000 M Street, NW
Washington, D.C. 20554

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AUG 31 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Engelman:

INQUIRY FROM: Robert J. Keller (Reference #: mmp-64816)

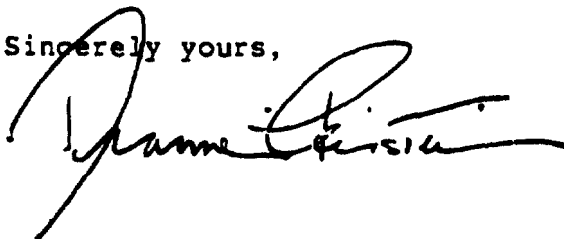
RE: FCC WT Docket # 94-147

I am forwarding the attached constituent inquiry for your review and consideration. I believe that my constituent would benefit from your response to the specific issues raised in the enclosed letter.

I would appreciate it if you would return your response, in duplicate, to my Washington, DC office as quickly as possible so that I can share the information with my constituent.

With warmest personal regards.

Sincerely yours,



1484458

ROBERT J. KELLER, P.C.
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Washington DC 20036
Tel: 202-293-0011 ext. 200

July 21, 1998

RECEIVED

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

AUG 31 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re: James A. Kay, Jr.
Federal Communications Commission WT Docket No. 94-147

Dear Senator Feinstein:

I am writing on behalf of my client, James A. Kay, Jr. to enlist your assistance in resolving the above-referenced matter that has been pending before the Federal Communications Commission ("FCC") since December of 1994. Mr. Kay is the target of license revocation proceedings before an FCC administrative law judge. He has tried repeatedly to settle the matter with the Commission, even offering to pay a substantial financial penalty and to provide mobile radio spectrum capacity free of charge for public safety users. However, the staff of the Wireless Telecommunications Bureau ("Bureau"), the branch of the FCC prosecuting the case against Mr. Kay, however, is unwilling even to discuss any settlement proposal that would allow Mr. Kay to retain his licenses. For the reasons explained more fully below, however, the public interest would not be served by revoking Mr. Kay's licenses. In fact, forcing Mr. Kay out of business will ~~have~~ be detrimental to a significant number of citizens and businesses in the Los Angeles area. We are therefore asking for your assistance in convincing the Bureau to consider a viable settlement to avoid this and as an alternative to lengthy and costly litigation.

Mr. Kay lives and works in the Van Nuys section of Los Angeles, California. He operates a commercial mobile radio business (often referred to as an "SMR" system, for "specialized mobile radio") in the Los Angeles, California area. This system provides dispatch and other mobile radio communications for a variety of business, government, public, and philanthropic concerns. These services are provided on radio facilities licensed by the FCC--the very licenses the Bureau is now seeking to have revoked. In the past when a wireless operator's authorizations were revoked, one could expect another operator to step in to fill the void. But due to a number of FCC rule changes in the wake of spectrum auctions, this is no longer the case. If Mr. Kay's licenses are revoked, the spectrum will not be re-licensed to other SMR operators like Mr. Kay. It will most likely either lie fallow, or be "recovered" by one of the new wide area digital licensees such as Nextel. This will leave a very real void in the market.

Mr. Kay is virtually the last remaining purveyor of traditional dispatch services in the Los Angeles area. If Mr. Kay's licenses are revoked, it is estimated that fewer than ten percent of the units currently served by him would be accommodated on other existing traditional systems. Customers representing about 9,000 units would be forced to migrate to wide area digital systems at a cost of approximately \$200 per unit and would realize a significant increase in monthly service fees. In addition, they would lose the benefit of custom designed systems provided by Mr. Kay (who has the flexibility to design systems to fit the customer's need), and would instead be

The Honorable Dianne Feinstein
July 21, 1998
Page 2

required to modify their needs to correspond to the "one-size-fits-all" system provided by the digital provider. The Bureau's insistence on revoking Mr. Kay's licenses, therefore, will not be limited to Mr. Kay in its impact. This will have an adverse effect on virtually every small business that uses mobile radio service.

Shutting down Mr. Kay's business will also eliminate the jobs of several employees who have no involvement whatsoever in the dispute between Mr. Kay and FCC staff. Mr. Kay currently employs fifteen employees, four of whom are minorities and five of whom are women. While most of these will have difficulty finding jobs in the current economic climate in Los Angeles, three of them are elderly (nearing or over 60 years old) and will likely find reemployment virtually impossible.

Mr. Kay is not asking for a free ride, and he is willing to acquiesce in some regulatory sanction as part of a settlement. While he believes he was justified in withholding competitively sensitive information from the Bureau under the circumstances, it is possible that his formal legal counsel may not have pursued this in the most prudent manner. He is therefore willing to make some sort of a compromise. But it is respectfully submitted that the revocation of all his licenses, the loss of his business and his livelihood, the resulting loss of jobs by his employees, and the adverse impact on Los Angeles businesses, are penalties far out of proportion to any transgression Mr. Kay may have committed. All we are asking is that the Bureau open its mind to an arrangement that will address its legitimate enforcement concerns, while not totally destroying Mr. Kay and harming numerous innocent bystanders.

Because of the FCC rules regarding ex parte communications in hearing cases, it would not be proper for you to communicate with the Commissioners or the General Counsel's Office as to this matter. You may, however, communicate directly with the Chief of the Wireless Telecommunications Bureau, a party to the proceeding, and we urge you to do so. The Bureau has it within its power to defuse this matter, to give full consideration to possible alternatives to litigation, and to recommend a negotiated settlement to the ALJ and/or the Commissioners. Thus far the Bureau's mind has been closed. It is our sincere hope that your office might encourage the Bureau to take a more enlightened view of this matter. The contact information for the Bureau Chief is as follows:

Mr. Daniel Phythyon, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554
Telephone: 202-418-0600

I am available to discuss this matter or provide you with any additional information you may require. Do not hesitate to call on me.

Very truly yours,



Robert J. Keller
Special Communications
Counsel for James A. Kay, Jr.